

BINGHAM MCCUTCHEN LLP
TRENTON H. NORRIS (SBN 164781)
THOMAS S. HIXSON (SBN 193033)
MAZEN M. BASRAWI (SBN 235475)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: 415.393.2000
Facsimile: 415.393.2286
Email: trent.norris@bingham.com
thomas.hixson@bingham.com
mazen.basrawi@bingham.com

DOLL AMIR & ELEY LLP
GREGORY L. DOLL (SBN 193205)
HUNTER R. ELEY (SBN 224321)
1888 Century Park East, Suite 1106
Los Angeles, CA 90067
Telephone: 310.557.9100
Facsimile: 310.557.9101
Email: gdoll@dollamir.com
heley@dollamir.com

Attorneys for Plaintiff
JONATHAN BROWNING, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JONATHAN BROWNING, INC., a California
corporation,

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC., a Nevada
limited liability company; LAS VEGAS SANDS,
LLC., a Nevada limited liability company; LAS
VEGAS SANDS CORP., a Nevada corporation;
and DOES 1 through 100, inclusive ,

Defendants.

No. C 07-3983 JSW

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANTS' MOTION FOR
ADMINISTRATIVE RELIEF TO
CONTINUE THE CASE
MANAGEMENT CONFERENCE**

Complaint filed: August 2, 2007
Courtroom: 2, 17th Floor
Judge: Honorable Jeffrey S. White

Pursuant to Northern District Civil Local Rule 7-11(b), Plaintiff Jonathan Browning, Inc. submits this opposition to the motion to continue the case management conference (“CMC”) filed by Defendants Venetian Casino Resort, LLC , et al. (the “Venetian”). The Venetian has not demonstrated good cause for continuing the CMC, and a continuance would prejudice Jonathan Browning.

The Court scheduled the November 16, 2007 CMC three months ago. *See* Order Setting Case Management Conference and Requiring Joint Case Management Conference Statement (Aug. 10, 2007). The Court’s August 10 order stated that “[a]ny request to reschedule the date of the conference shall be made in writing . . . at least ten (10) calendar days before the date of the conference and must be based upon good cause.” *Id.* In addition, the Court’s Civil Standing Order No. 3 states that “[c]ontinuances will be granted only upon a showing of good cause particularly focusing on evidence of diligence by the party seeking delay.”

The Venetian’s request to continue the CMC is untimely and in any event does not set forth facts showing diligence. In particular, the Venetian does not state when its counsel realized he was likely to have a scheduling conflict with the November 16 CMC. If this fact was apparent even a couple of weeks ago, Jonathan Browning would have been willing to reschedule the CMC to an earlier date. But since the Venetian has waited as long as it did to seek this continuance, rescheduling the CMC at this point means delaying it.

Delaying the CMC would prejudice Jonathan Browning. The Venetian has taken the position that it does not have to make the initial disclosures required by Federal Rule of Civil Procedure 26(a), participate in any discovery, or meet and confer about scheduling literally anything in this case. *See* Joint Case Management Statement (filed November 8, 2007) at 3, 7-8, 10 (Venetian asserts it is “premature” to set a trial date “or any other pretrial deadlines,” or participate in any discovery or make any initial disclosures). The Venetian’s stated reason is that it has a pending motion to dismiss, which it hopes may result in the dismissal or some or all of Jonathan Browning’s claims. *See id.* However, it is commonplace at an early stage in the case for one or more parties to have filed a pleadings motion. That does not normally prevent them from meeting and conferring on the subjects listed in Civil Local Rule 16-10. Moreover, the

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1 Court has ordered the parties to meet and confer on these issues. *See* Order Setting Case
 2 Management Conference and Requiring Joint Case Management Conference Statement (Aug.
 3 10, 2007). Because the Venetian is not making a meaningful attempt to meet and confer, as it is
 4 required to, it appears likely that no progress will be made until a CMC occurs and the Court
 5 orders initial disclosures and sets other pretrial deadlines.

6 That said, Jonathan Browning is willing to reschedule the CMC to a date close in
 7 time to November 16 to accommodate the Venetian's counsel's schedule conflict. Jonathan
 8 Browning is available November 14 and 19 for a CMC, if those dates are convenient for the
 9 Court. In addition, Northern District Civil Local Rule 16-10(a) provides that lead trial counsel
 10 need not attend the CMC if "excused by the Judge." The Court could excuse Mr. Wong's
 11 appearance at the CMC and allow his colleague, whom the Venetian has also listed as counsel of
 12 record on every pleading it has filed, to appear instead.

13 For these reasons, Jonathan Browning opposes the Venetian's motion to continue
 14 the CMC.

15 DATED: November 9, 2007
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17 BINGHAM McCUTCHEN LLP
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19
 20 By: /s/ Thomas S. Hixson
 21 Thomas S. Hixson
 Attorneys for Plaintiff
 JONATHAN BROWNING, INC.

22 DATED: November 9, 2007
 23

24 DOLL AMIR & ELEY LLP
 25

26 By: /s/ Gregory L. Doll
 27 Gregory L. Doll
 Attorneys for Plaintiff
 JONATHAN BROWNING, INC.